

APPELLATE CIVIL.

Before Broadway J.

GIRDHARI LAL (JUDGMENT-DEBTOR) Appellant

1933

*versus**March 28.*

PARS RAM AND ANOTHER (DECREE-
HOLDERS)
GHANSHAM DAS AND ANOTHER
(JUDGMENT-DEBTORS) } Respondents.

Civil Appeal No. 1931 of 1932.

Civil Procedure Code, Act V of 1908, Orders XXXIV and XL: Mortgage decree—Execution of—against property outside Court's territorial jurisdiction—Appointment of Receiver—whether valid.

Held that, primarily, a Court having jurisdiction to try a suit has jurisdiction to execute the decree granted by it, and that in the execution of a mortgage decree the Court has power to order the sale of the property mortgaged, even though the property may be situated beyond the local limits of its jurisdiction.

Maslyk v. Steel (1), *Tincoan v. Shib Chandra* (2), *Kartick Nath Pandey v. Tilukdhari Lal* (3), *Rajagopala v. Tirupattoka Pillai* (4), and *Abdul Hadi v. Mst. Kabultun-nisa* (5), followed.

Held also, however, that Order XXXIV of the Civil Procedure Code having been specifically brought into the Code with a view to dealing with mortgage-decrees and being self-contained, the appointment of a receiver to take possession of the mortgaged property for the purpose of selling it was justified neither by law nor by expediency.

Makhan Lal v. Mushtaq Ali (6), followed.

Paras Ram v. Puran Mal-Ditta Mal (7), not followed.

Promothanath Maha v. Low and Company (8), distinguished.

(1) (1887) I. L. R. 14 Cal. 661.

(5) 1925 A. I. R. (Pat.) 129.

(2) (1891) I. L. R. 21 Cal. 629.

(6) 1927 A. I. R. (All.) 419.

(3) (1888) I. L. R. 15 Cal. 667.

(7) 1925 A. I. R. (Lah.) 590.

(4) (1926) I. L. R. 49 Mad. 746.

(8) 1930 A. I. R. (Cal.) 502.

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 v.
 PARS RAM.

Miscellaneous First Appeal from the order of Mian Ghulam Ali Khan, Senior Subordinate Judge, Multan, dated the 3rd December, 1932, appointing a receiver and ordering the sale of the factory with site and building, etc.

NAWAL KISHORE, for Appellant.

R. C. MANCHANDA, for Respondent No. 1.

BROADWAY J.

BROADWAY J.—One Pars Ram obtained a decree against *Lala Girdhari Lal* on a mortgage. The preliminary decree was passed on the 19th April 1932 and this was made final on the 4th October 1932.

On the 12th November, 1932, the decree-holder took out execution of the decree and sought to bring the mortgaged property to sale. This property consisted of a factory in the Sheikhpura District and also some immovable property in Multan.

The suit had been tried and the decree had been passed by the Senior Subordinate Judge of Multan and the execution proceedings were instituted in the same Court.

At the instance of the decree-holder the executing Court (holding that it had jurisdiction to execute the decree against property situate without its territorial jurisdiction) appointed a receiver of the factory and directed him to take possession thereof and sell the same.

Against this order an appeal has been preferred by the judgment-debtor through Mr. Nawal Kishore who has pressed two matters before me.

Firstly he urged that the executing Court had no jurisdiction to direct the sale of the factory which

was situate at Sangla Hill, and secondly, that no receiver could or should have been appointed.

It seems to me that the first matter has been concluded by authority and Mr. Nawal Kishore admitted that the Calcutta view was against him. Primarily a Court having jurisdiction to try a suit has jurisdiction to execute the decree granted by it, and it has been held by the Calcutta High Court that in the execution of a mortgage decree the executing Court has power to order the sale of the property mortgaged, even though the property may be situated beyond the local limits of its jurisdiction—see *Maslyk v. Steel* (1), *Tincoan v. Shib Chandra* (2), *Kartick Nath Pandey v. Tilukdhari Lal* (3). The last of these decisions was followed in *Rajagopala, etc. v. Tirupattoka Pillai* (4) by the Madras High Court, it being held that a Court can execute a mortgage-decree passed by itself, although the property to be sold is wholly or partly outside its jurisdiction.

A similar view was taken by a Division Bench of the Patna High Court in *Sheikh Abdul Hadi v. Mus-sammatt Kabultun-nisa* (5).

In view of these authorities I must hold that the Multan Court that had passed the decree in the suit could execute the same and order the sale of the factory mortgaged even though the factory was situate outside its territorial jurisdiction.

For the second point Mr. Nawal Kishore relied on *Makhan Lal v. Mushtaq Ali* (6), where it was held by the Allahabad High Court that a receiver could not be appointed in proceedings in execution which fell within

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(1) (1887) I. L. R. 14 Cal. 661. (4) (1926) I. L. R. 49 Mad. 746.

(2) (1894) I. L. R. 21 Cal. 639. (5) 1925 A. I. R. (Pat.) 139.

(3) (1888) I. L. R. 15 Cal. 667. (6) 1927 A. I. R. (All.) 419.

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the purview of Order 34, Civil Procedure Code, the provisions of which did not allow of the application of the procedure provided by Order 40, Civil Procedure Code. Mr. Manchanda referred me to *Promothanath Maha v. H. V. Low and Company* (1) and *Paras Ram, etc. v. Puran Mal-Ditta Mal* (2) and urged that a receiver could be appointed in execution of a mortgage decree. I am unable to find anything to support this contention in the Calcutta case but the Lahore case is undoubtedly in point. It seems to me, however, that the Allahabad view has a great deal of force. Order 34, Civil Procedure Code, was specifically brought into the Procedure Code with a view to dealing with mortgage decrees and, as at present advised, I can see no reason for thinking that that Order was not meant to be self-contained and to provide for all matters to which it referred. All that the executing Court can do in the execution of a mortgage decree is to direct the sale of the property mortgaged and it seems to me that it merely increases the cost of the proceedings to appoint a receiver to carry out such a sale.

In the present case it appears to have already been a costly step and I have not been shown any real justification for the appointment. While, therefore, I hold that the Multan Court has jurisdiction to direct the sale of the factory, I hold that it erred in appointing a receiver and, accepting this appeal to this extent, I set aside the appointment. Parties to bear their own costs.

N. F. E.

Appeal accepted in part.

(1) 1930 A. I. R. (Cal.) 502.

(2) 1925 A. I. R. (Lah.) 590.